

7 p.m. meeting opened.

Present were: Anderson (Chair), McDonough, Jeton, Ranalli (Acting Clerk), Baime, Brown

Petition No: 3781

Petitioner: J&B Realty Trust

Premises Affected: 11, 21-23 Lupine Road

Participating Members: Anderson, McDonough, Jeton, Ranalli (acting clerk), Baime

There was a request to withdraw without prejudice. The Board voted unanimously to allow the withdrawal without prejudice.

Petition No: 3744

Petitioner: Andover Public Schools

Premises Affected: 80 Shawsheen Road

Participating Members: Anderson, McDonough, Jeton, Ranalli (acting clerk), Baime, Brown

There was a request to continue to 6/5/08. The Board voted unanimously to continue the hearing to 6/5/08.

Petition No: 3740

Petitioner: Northfield Commons

Premises Affected: 69 North St., 5 + 7 Webster St.

Participating Members: Anderson, McDonough, Jeton, Ranalli (acting clerk), Brown

There is a request to continue for two weeks to 5/22/08 at 7 p.m., location TBD. McDonough made a motion to move to 5/22/08. Jeton seconded the motion. The Board voted unanimously (5-0, Baime not participating) to continue to 5/22/08.

Petition No: 3779

Petitioner: Bambury

Premises Affected: 19 Yardley Road

Participating Members: Anderson, McDonough, Jeton, Ranalli (acting clerk), Baime, Brown

Andrew Bambury represented himself in his request for a variance to construct a 12'x22' deck of the side of his house. The proposed side setback would be 9'. There is a septic system in the front yard, a drainage easement at the side and wetlands to the rear. Anderson noted that the house was built in 1982. Jeton noted the line of trees separating the neighbor's house. Bambury added that it is a natural boundary & that the neighbors are in support of the deck. He submitted photos of the lot. Ranalli asked for the location of the septic system & the wetlands. Bambury informed the Board that he has Conservation Commission approval. Anderson asked if a small portion of the deck could be cut off to make it conform. Bambury stated that he'd rather not due to aesthetics and the reduction in the area of the deck. Brown asked for the level of the first floor – if it is

at ground level. Bambury stated that it slopes from six to eight feet back. Jeton suggested that patio pavers could be used without zoning relief. Brown asked if there is an alternative location at the rear of the house near the existing porch. Bambury stated his preference to put the deck off the kitchen. Anderson asked for the distance of the abutters to the lot line. Bambury guessed it is 30-35'. Anderson suggested buying some of the neighbor's land stating there are three alternatives to a variance or that the Petitioner could withdraw without prejudice. Bambury stated that he would withdraw without prejudice. McDonough made a motion to allow the withdrawal without prejudice. Ranalli seconded the motion & the Board voted (6-0) to allow the withdrawal without prejudice.

Petition No: 3780

Petitioner: Fragala

Premises Affected: 8 Alderbrook Road

Participating Members: Anderson, McDonough, Jeton, Ranalli (acting clerk), Baime, Brown

James Fragala represented himself & his wife in their request for relief to remove an existing porch to build a 3-season porch with kitchen expansion & addition. The house is located on a corner lot in the SRC District. The house is non-conforming. The proposed alterations / additions will be the same as the existing, with the exception of the being closer to Lavender Hill Ln. Fragala was unsure if Lavender Hill Lane existed when the neighboring houses were built. Anderson informed Fragala that the Board needs a certified plot plan of the proposed construction due to the proposed encroachment into the setbacks. Brown asked for a characterization of the neighborhood. The houses were built in the 50's and 60's, mainly capes, many of which don't meet the 50' front setback. The neighbors support the proposal. The Board waived the site view. Jeton reiterated the need for a certified plot plan. Anderson suggested closing the hearing & deliberating subject to the submission of a certified plot plan or continue the hearing and the deliberate with a certified plot plan. Brown noted that it wouldn't be closer than 38.9'. McDonough made a motion to close the public hearing. Ranalli pointed out that the house faces Lavender Hill Lane & asked where the driveway is located. Fragala noted that their driveway goes to Alderbrook & that Lavender Hill was constructed after their house. Anderson suggested continuing the hearing to 5/22/08 in order to get the certified plot plan. Jeton made a motion to continue to 5/22/08. Ranalli seconded the motion & the Board voted (5-0) (Baime off) to continue to 5/22/08.

Petition No: 3783

Petitioner: Dempsey

Premises Affected: 3 McDonald Circle

Participating Members: Anderson, McDonough, Jeton, Ranalli (acting clerk), Baime, Brown

Timothy Dempsey represented himself in his request to remove a screened porch to build an addition. The house is located in the SRB District. Dempsey submitted photos to the Board & explained that he wishes to repair the existing porch and decrease it in size.

Anderson noted that the house was built in 1982. Jeton noted that it was part of a cluster subdivision. Kaija Gilmore, Inspector of Buildings reminded the Board that the rear setback requirement is 30'. McDonough asked for the existing rear setback. It is 15'. Anderson asked if the Petitioner would remove & replace the porch. He confirmed this adding that the footings are insufficient. Brown asked if the open decks would be eliminated from the porch. They will be eliminated. Anderson asked Jeton if a cluster subdivision would allow a smaller setback. Jeton stated that it would not. Brown suggested the setback in question might be considered a side yard setback. Anderson suggested continuing to 5/22/08 for a certified plot plan, building permit, and/or subdivision plan to show why and if it's legal. McDonough asked if it could be repaired without zoning relief & if it was going to be torn down. Dempsey explained that he wants to remove the decks, shore up the floor & put in sonotubes. He stated that he is not tearing it down. Brown suggested a continuance so the builder can determine if it can be repaired, or if it has to be torn down. Anderson suggested a continuance to 5/22/08 or getting a certified plot plan. Gilmore offered her opinion that sonotubes/footings are a structural change and not a repair. Anderson questioned the definition of repair under building code versus zoning. Gilmore explained that if it remains a porch, it's ok. But if it changes to a 3-season porch, it is not a repair. Anderson argued that it would be on the same footprint, only more structurally sound. Anderson asked if the Board wished to continue the hearing to 5/22 or 6/5. Jeton made a motion to continue to either 5/22 or 6/5. Baime seconded the motion. Dempsey stated his preference for 5/22. The Board voted unanimously (6-0) to continue the hearing to 5/22/08. Anderson asked the Petitioner to meet with Gilmore & his builder to see if it would be repairs only, or new construction. He also asked for the original building permit.

Discussion Item:

Petition No: 3683

Petitioner: Ianicelli

Premises Affected: 103 Summer Street

Participating Members: Anderson, McDonough, Jeton, Ranalli (acting clerk), Baime, Brown

The decision, which was silent on the deck, approved a 10'x10' deck. However, the Petitioner applied for a building permit for a 14'x14' deck. Anderson stated that further zoning relief is required, or they can build the 10'x10' deck.

Petition No: 3778

Petitioner: Metro PCS

Premises Affected: 127 Reservation Road

Participating Members: McDonough, Jeton, Ranalli (acting clerk), Baime, Brown

Peter Morin, Esquire, represented the Petitioner. They wish to install 3 antennas inside the church steeple at 83' height. The antennas will not be visible from any neighboring property or way. He argued that it is therefore not a wireless facility and the setback provisions to not apply. Morin submitted a list of anticipated proposed sites in Andover.

Franz Pierre, RF Engineer for Metro, was also present. Brown asked for the coverage of previously approved installations. Pierre did not have such a map, but showed the coverage of the proposed/future sites. Baime asked if there was existing coverage in the area of the proposed installation. Pierre stated that there is no coverage and that the coverage it will provide will overlap with other sites, allowing continuous coverage & a decreased in dropped calls. The Metro PCS frequency transmits on the AWS spectrum, a low power and therefore doesn't travel far. Morin added that if there were a lot of overlapping coverage, it would create network problems. Equipment maintenance in the attic is restricted to technicians only and would occur on a monthly basis, but much is done remotely. Brown asked about the structural integrity of the building to support the equipment. Kaija Gilmore, Inspector of Buildings, stated that an engineering study is required when weight is added & would have to be provided by the company. Morin suggested it could be a condition of approval to submit an engineering study. Jeton made a motion to close the hearing. Brown seconded the motion & the Board voted (5-0) to close the hearing. Baime noted that there is a coverage gap and the provider proposes collocation. She suggested approving it on the condition that an engineering study is submitted. Brown noted that this was addressed in the previous decision. Ranalli reminded the Board that they could hire a consultant for review of the engineering. McDonough, Jeton & Brown did not feel a peer review was necessary in this case. Brown asked for a plan to show the approved installations coverage. Baime added that they would need the engineering if it were a new structure. The Board voted (5-0) to approve the requested relief. Baime will write the decision.

Petition No: 3775

Petitioner: Hairston

Premises Affected: 39 Rattlesnake Hill Road

Participating Members: Anderson, Bevacqua, Jeton, Baime, Brown

This is a continued public hearing. Alan Hairston represented himself in his request to construct a rear addition that will not meet the front setbacks. The proposed front setback is 29.4' from Countryside Way, the other street the lot fronts on. Jeton made a motion to close the hearing. Baime seconded the motion & the Board voted (5-0) to close the hearing. Brown made a motion to grant a special permit with the condition that the revised plot plan be made part of the decision and to deny the variance. Baime seconded the motion & the Board voted (5-0) to grant the special permit & deny the variance. Bevacqua will write the decision.

Petition No: 3782 + 3784

Petitioner: Ristuccia

Premises Affected: 33 High Street

Participating Members: Anderson, McDonough, Jeton, Ranalli (acting clerk), Baime, Brown

Attorney Mark Johnson represented Petitioner Michael Ristuccia in his request for a dimensional special permit for historic preservation under section 7.9. He proposes to subdivide one lot into two, to maintain the existing house on one lot and to put an historic

house on the second lot. Brown questioned whether the width of the lot would meet the 80% rule. Anderson asked for the dimensions to be shown on the plan. Johnson agreed to submit it. Marybeth Nason, 55 High St., asked about the possibility of additional houses on the lot. Johnson & Ristuccia explained that the existing house has 3-units. There are no plans to convert the barn to a dwelling unit at this time and there isn't enough area or frontage for another structure. Debra Day Cummings & Doug Cummings, 67 High St., voiced concern over the high water table, flooded basements, the dry well, & mitigation measures. Ristuccia explained that the dry well would catch the run-off. He said he'd ensure that there is no change in the water impact. Nason asked about parking. It will be in the side yard for the relocated house with a row of arbor vitas between the lots to provide a buffer. For the existing house, an easement will be granted to continue the current parking location. McDonough made a motion to close the public hearing. Jeton seconded the motion. McDonough sat off the remainder of the hearing. The Board then proceeded to deliberate. Brown commented that the threat of demolition is somewhat hypothetical. Brown made a motion to approve both petitions. Jeton seconded the motion and the Board voted (5-0) to approve both petitions subject to the usual historic preservation restrictions. Ranalli will write the decisions.

Petition No: 3785

Petitioner: Exxon Mobil

Premises Affected: 139 River Road

Participating Members: Anderson, McDonough, Jeton, Ranalli (acting clerk), Baime, Brown

Attorney Mark Johnson represented the Petitioner. Also present for the Petitioner were Tony Guba, site engineer, & John Gillan, traffic consultant. Johnson gave an overview of the proposal to date. In January, they proposed a renovation/replacement of the building, with car wash & drive through. It was withdrawn without prejudice. The current proposal does not include a car wash; the number of pumps was decreased to 5 & a drive through window was added. They submitted an aerial photo of the site. Anthony Guba, engineer, gave an overview of the current proposal. He noted a mistake on the sheet table, which states 17%, but should be 13%. The retaining wall was also removed. He submitted revised plans. Among the other changes were a different sized canopy, a 3300 sq. ft. building, elimination of car repair, expansion of the store + Dunkin Donuts, drive through at the rear, increased rear setback, removal of underground tanks + replace with double wall tanks, the drive was moved further back from the intersection. Trash was moved to the rear left corner, parking configuration was changed in conjunction with Police recommendations, the size of tanks decreased, and landscaping increased along the hotel side. The proposed building is 9800 sq. ft. a 50% increase in impervious area from the previous proposal. The style is more in character with residential structures. The proposed building is 15-16' high. Johnson submitted a photo of the existing and proposed building, emphasizing the same footprint. Baime asked if there is more or less parking than currently provided. Guba stated that it is currently undefined, but the proposed may be 1 or 2 spaces less. Fourteen spaces are required, fifteen are proposed. There are 10 filling locations that act as spaces. Plus the drive through eliminates the need for some spaces. Guba reviewed the drive through & on site circulation patterns.

The no parking zone to the front left of the site will remain for the tankers, which would not block traffic. They have spoken with Fire Prevention regarding sprinkler requirements. Johnson reviewed the relief requested: special permit for non-conforming use as gas station since it opened in 1966. In the alternative, variances are requested to allow the drive through. Anderson asked Johnson to cross out 'car wash' in the application. Johnson agreed. He explained that they would need a variance for the store with drive through and dimensional variances for setbacks. Guba pointed out that the site is 200'x200' and the minimum setback on all sides is 100', leaving no building envelope. Anderson asked for a presentation on traffic. Jack Gillon, traffic engineer, gave an overview on traffic. The counts and trip generation figures came up with 360% more than expected. He argued that the proposal would improve the flow of traffic, will not generate a lot of new traffic, & clean up the existing problem (E + F will remain the same). Anderson asked if the drive through would generate more traffic. Gillon stated that there would be an increase of 64 people per hour on average. The Board discussed possible changes to improve traffic issues. They would need Site Plan Review by the Planning Board, which would review traffic access & flow. The Petitioner had an IDR that it included the car wash; Town staff raised no issues. The proposed building is 40-50% larger than the existing convenience store plus Dunkin Donuts. Jeton stated that this Petitioner was denied two times for a convenience store in 1987 and 1990. Then in 1995, it was limited to coffee products. Jeton emphasized the limitation to coffee products. Brown questioned walk-in traffic for coffee versus a full convenience store, assuming the expectation is to attract more clientel. Gillon argued it doesn't necessarily increase the trips. Guba argued that they need to keep it competitive and not lose business. Brown asked about competition in the immediate area. Baime stated there is none. Jeton added that the square footage includes the repair bays & the study shows existing conditions, but the proposal is subject to different scenarios. McDonough asked if the increase in customers would be due to the store or the drive through. Gillon explained that the number is based on the number of pumps resulting in a minor increase of customers, sale of more products, and an increase in space for ADA compliance and registers. McDonough asked if they had looked at studies without pumps. They have. Petitioners' representatives gave an overview of the floor plan of the convenience store, sales area & products. Baime argued that they do the same now. Brown asked if there is any self-service food other than Dunkin Donuts. Guba stated it is possible. Anderson outlined three options: approve, deny or wait for Planning. Jeton reminded the Board that there are twelve variances for the site located in the ID District. She voiced concern over the use variances, especially for the convenience store with drive through, in a high-class office district, the concern with precedent on stores & drive-throughs and not wanting to send it to Planning Board because it is not appropriate. She added that the existing structure is/was a gas station with a mini coffee counter. Johnson argued that this is a unique property in the ID, an existing gas station that is trying to improve site/flow with an accessory use (convenience store) that is non-conforming. Anderson read into the record an opposition letter from Larry Bruce, Chandler Road. He stated his conflict with the current proposal due to the multiple variances. Baime stated she is not convinced that the traffic won't get worse with a drive through. More information is needed on traffic impact. Anderson suggested a peer review of the traffic study. Brown asked that basic zoning be addressed: it exists only by variances and therefore is not non-conforming in

use or structure. It does not qualify for a special permit and can be changed only by new variances or modification of the existing variances. Jeton & Anderson agreed with Brown. Anderson stated it is not a lawful pre-existing use, but exists by virtue of variance and needs variance relief, not special permit. Brown asked for the hardship for expanding the use, emphasizing that the existing variances run with the land and can continue. Jeton added that improving the site doesn't mean adding a drive through, but improving the landscaping and better parking. Johnson asked why increasing safety is not an improvement. Anderson explained that the character of a drive through changes the site's character. Johnson asked the Board to continue the hearing to 6/5/08 & asked for the Board's sense of feeling on the canopy/pumps & the convenience store with drive through. The Board expressed their general support for the pump realignment, but their discomfort with the convenience store & drive through. The Board discussed the option of having a traffic peer review paid for by the applicant. Johnson noted that there is no requested relief for signage under the current proposal. The Board voted unanimously to continue the hearing to 6/5/08 at the Petitioners' request.

Brown made a motion to approve the minutes of 11/1/07 (with his revisions as previously submitted to the Secretary), 11/15/07 & 12/6/07. Anderson seconded the motion & the Board voted (5-0) to approve the minutes.

The meeting adjourned at 10:34 p.m.